

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KENNETH EVERAGE,

Petitioner,

vs.

Case No. 3:12-cv-00027-DRH

TARRY WILLIAMS,

Respondent.

MEMORANDUM AND ORDER

HERNDON, District Judge:

This matter is before the Court on petitioner's motion for leave to appeal *in forma pauperis* (Doc. 34) and motion to confirm transcript proceedings (Doc. 32). The Court dismissed this case with prejudice on September 30, 2014 and denied a certificate of appealability (Doc. 26). Based on the following, the Court DENIES the motion to proceed IFP and DENIES the motion to confirm transcript proceedings as MOOT.

Rule 24 of the Federal Rules of Appellate Procedure provides that a party to an action in federal district court who desires to appeal *in forma pauperis* must first file a motion in the district court requesting leave to appeal without payment of fees and costs. *See* Fed. R. App. P. 24(a)(1). The motion must be supported by an affidavit that: (1) shows the party's inability to pay or to give security for fees and costs; (2) claims an entitlement to redress; and (3) states the issues that the party intends to present on appeal. *See id.*

Further, a party who was permitted to proceed *in forma pauperis* in the district court action may proceed on appeal *in forma pauperis* without further authorization, unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed *in forma pauperis*. See Fed. R. App. P. 24(a)(3). “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). An appeal is in good faith if it raises legal points that are reasonably arguable on their merits. See *Neitzke v. Williams*, 490 U.S.319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738, 744 (1967)). To appeal in bad faith, on the other hand, means to appeal “on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit.” *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000).

In the instant case, petitioner’s motion to proceed IFP fails because his appeal is not taken in good faith. No reasonable person could suppose that this appeal has any merit. The Court therefore certifies that petitioner’s appeal is not taken in good faith.

IT IS THEREFORE ORDERED that, because the appeal is not taken in good faith, petitioner’s motion for leave to appeal *in forma pauperis* is **DENIED**. Petitioner shall tender the \$505.00 appellate filing and docketing fee to the Clerk of the Court in this District within **TWENTY-ONE** (21) days of the date of this Order, or he may reapply to the Seventh Circuit Court of Appeals for leave to proceed *in forma pauperis* on appeal.

Petitioner is Advised that Federal Rule of Appellate Procedure 24(a)(5) allots petitioner 30 days from service of the notice of the denial of his motion in the district court to file a motion for leave to proceed *in forma pauperis* directly with the appellate court. Petitioner should consult Rule 24(a)(5) for additional instructions.

Further, the **Clerk of the Court** is **DIRECTED** to notify the Court of Appeals for the Seventh Circuit of this order. *See* Fed. R. App. P. 24(a)(4).

Finally, as to the petitioner's motion to confirm transcript proceedings, the petitioner asks the Court to file a transcript information sheet. The transcript information sheet was filed on March 9, 2015 (Doc. 33). Further, the petitioner states that he wishes to enforce Circuit Rule 10(a). The Court notes that the record on appeal has been prepared and the Court is in compliance with applicable rules. Accordingly, the petitioner's motion to confirm transcript proceedings (Doc. 32) is **DENIED** as **MOOT**.

IT IS SO ORDERED.

Signed this 12th day of March, 2014.

Digitally signed by
David R. Herndon
Date: 2015.03.12
16:26:54 -05'00'

The block contains a digital signature and a court seal. The signature is a blue ink scribble that reads "David R. Herndon". To its right is the official seal of the United States District Court for the Southern District of Ohio. The seal is circular with an eagle in the center, surrounded by the text "UNITED STATES DISTRICT COURT" and "SOUTHERN DISTRICT OF OHIO".

United States District Judge